IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
CHAMBER SUMMONS NO.261 of 2007
IN
SUIT NO.3853 OF 2002

Tarla N.Morjaria & ors .. Plaintiffs

vs

Bipin Hiralal Shah & anr.. Defendants

WITH CHAMBER SUMMONS NO. 351 OF 2006
IN
SUIT NO.3853 OF 2004

Tarla N.Morjaria & ors . Plaintiffs

vs

Bipin Hiralal Shah & anr ..Defendants

Mr.Sanjay Jain with Ms.K.A.Shah i/b A.G.Shah for Plffs
Mr.Nilesh Modi a/w Ms.Deepali Thakor i.b Rustamji & Ginwala for Defendants
CORAM : A.M.KHANWILKAR, J

DATE : 28th March, 2007

P.C.

1. This order will dispose of both the Chamber Summons taken out by the respective parties. Both the parties seek to challenge the correctness of the view taken by the Court Receiver in his order dated 2nd February 2007 determining the royalty amount in respect of the disputed property at the rate of Rs.4900/- p.m. For reaching that conclusion, the Court Receiver has taken into account the valuation of the suit property which is 1 room admeasuring 198 sq.feet built up area (i.e. 165 sq.ft carpet area) as Rs.6,50,000/-. He has

then provided for depreciation at the rate of of 20 % thereon. On that depreciated value, he has provided for return at the rate of 9 % pa, thus rounded up royalty amount as Rs.4,900/- p.m.

2. According to the defendants, the amount of royalty so determined by the Court Receiver is excessive whereas the plaintiff would contend that the said amount is inadequate.

3. According to the plaintiffs, the royalty amount should be not less than Rs.9,653/-p.m. This figure is arrived at by the plaintiffs on first considering the valuation of the property on the basis of Ready Reckoner and then providing 50 % depreciation on the construction cost thereof. The valuation of the property in the Ready Reckoner is Rs.53,000/- per sq.metre. The construction cost according to the plaintiffs will have to be assumed at Rs.1000/- per sq.ft. The plaintiff in addition relied on the valuation report which is Exhibit N to the plaint to butress this submission. In addition, reliance is placed on the document/sale instance of properties in the vicinity which is around Rs.6531/- to Rs.7,387/- per sq.ft.

4. According to the defendants, there is fallacy in the argument of the plaintiffs that the depreciation to be provided on the valuation given by the Ready Reckoner should be on the construction

cost of Rs.1000/- per sq.metre. Whereas, the depreciation should be on the entire valuation amount specified in the Ready Reckoner. Reliance is placed by the defendants on guideline 4 of the Ready Reckoner to support their submission. It is the case of the defendants that the monthly rent in respect of the disputed premises in no case shall exceed Rs.3,127/- p.m., as calculated in computation Exhibit 5 at page 45.

5. Having considered the rival submissions, there is substance in the grievance of both the sides that the Court Receiver has not indicated the basis on which he has assumed the valuation of the suit property at Rs.6,50,000/- or for that matter the depreciation at the rate of 20 %. By no standards, figure of Rs.6,50,000/- is in accord with the assumed valuation in respect of the property as provided in the Ready Reckoner. At the same time, there can be no difficulty in accepting the approach of the Court Receiver that valuation of the property can be founded on the rates specified in the Ready Reckoner.

6. In the present case, it is not in dispute that the building is old building. The age of the building is stated to be over 75 years. Accordingly, if we were to invoke valuation of the building provided under the Ready Reckoner, it will be at the rate of Rs.53,000/- per.sq.metre. That

means, for the premises admeasuring 198 sq.ft built up (165 sq.ft carpet area) valuation would be Rs.9,26,440/-. Indeed, this valuation is notional valuation for the purposes of paying stamp duty on the agreement. Point 4 however, further provides that depreciation rates should be provided in respect of old buildings. Different depreciation rates are provided in respect of buildings depending upon the age of the building. If the building is above 40 years, the depreciation to be provided is specified at 50 %. If this depreciation at the rate of 50 % is to be provided in that case, valuation of the suit premises will have to be assumed as Rs.4,63,220/-.

7. However, counsel for the plaintiffs would argue that the depreciation will have to be provided only on the construction cost and not on the entire property. He further submits that construction cost in respect of the building will have to be assumed as Rs.1000/-sq.ft. To support the argument that construction cost will have to be assumed at Rs.1000/- per.sq.ft, reliance is placed on item no. 9 of the guidelines to be read along with item no.7. On the other hand, counsel for the defendants placed reliance on point (i) below item no.4 of the guidelines which reads as follows :

> " While valuing old property if valuation arrived after allowing depreciation is less than the developed land value, then valuation should be done as per point no.7." (Land plus construction cost.)

Both arguments will have to be discarded on the reasoning that the Court Receiver was not called upon to decide the stamp duty payable on the property, but to determine the royalty amount which will be just and reasonable. As is mentioned earlier, the building is very old about 75 years. If so, the royalty rate determined by the Court Receiver in the sum of Rs.4,900/- per month for an accommodation (one room admeasuring 165 sq.ft carpet area) in my opinion, warrants no interference, on such technical argument. As the amount decided by the Court Receiver cannot be said to be either excessive or grossly inadequate, it is not necessary for this court to re-consider that rate of royalty. Indeed, Court Receiver while determining the royalty amount has to apply some norms and principles. But, that does not mean that the amount arrived at by him should have arithmetical exactitude which is the attempt of both the counsel.

I am inclined to uphold the royalty amount determined by the Court Receiver as I find that the same is just as it is between the two extreme views projeccted by the parties.For, if the calculation given by the plaintiffs were to be considered, the amount will be around Rs.9,653/-, whereas if calculation given by the defendants were to be accepted, the amount will work out to Rs.3,127/-. Since the amount determined by the Court Receiver

is almost in between both these amounts and having regard to thefact that the building is as old as 75 years, it is not a case of gross over-valuing or undervaluing the royalty amount. It cannot be overlookedthat neither party has produced or invited my attention to any material to establish the prevailing market compensation of comparable premises. Besides, this amount is only tentative;

as, if the plaintiff succeeds in the suit, he would get relief of appropriate amount of mesne profits and if the defendants were to succeed in that case they may not be liable to pay any amount exceeding Rs.250/- p.m. towards rent. All those issues will have to be decided in the suit on its own merits. That being so, merely because there is some error here or there, that alone need not be the basis for interference by this Court in relation to the order passed by the Court Receiver determining the royalty amount.

8. In the circumstances, both the Chamber Summons are dismissed.

9. Consequently, order of the Court Receiver determining royalty amount in the sum of Rs.4900/-p.m. in respect of the suit premises is upheld.

10. Since the challenge of the defendants with regard to the royalty amount has been rejected by

this order in the interest of justice the defendants are given four weeks time from today to pay the same, failing which Court Receiver shall proceed to take physical possession of the suit premises forthwith without inviting further directions from this court. It is recorded that time to deposit the outstanding royalty amount has been granted on the request of the defendants and the defendants through counsel have assured that the entire amount as determined by the Court Receiver will be deposited within 4 weeks from today unconditionally. The defendant no.1 is personally present in court and agrees to abide by this order.

(A.M.Khanwilkar, J)